

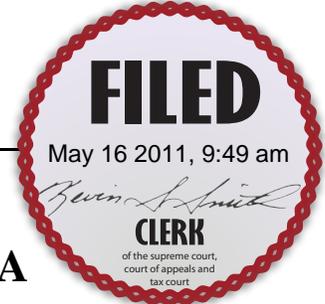
**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JENNIFER A. (BAXTER) LUKENS,

Appellant-Respondent,

vs.

CHAD A. BAXTER,

Appellee-Petitioner.

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No. 25A03-1009-DR-449

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APPEAL FROM THE FULTON CIRCUIT COURT  
The Honorable Wayne E. Steele, Special Judge  
Cause No. 25C01-0708-DR-289

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**May 16, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Jennifer (Baxter) Lukens appeals the denial of her petition for citation of indirect contempt of court. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Jennifer's marriage to Chad Baxter was dissolved by agreement on June 16, 2008. As part of the dissolution order, the parties entered into a property settlement agreement that divided their debts and assets. Among other things, Chad was to assume the debt of two Capitol One credit cards, both of which had been submitted to judicial collection proceedings, while Jennifer was to refinance the marital residence to remove Chad's name from the mortgage.

Jennifer filed an application to refinance in July 2008. It was denied in August 2008 because of "a judgment dated April 24th, '08, that was against Chad Baxter for the \$13,665.19," (Tr. at 6), that was owed to Capital One and assigned to Chad in the settlement agreement. Chad filed for bankruptcy in October 2008, and the bankruptcy was completed in January 2009.

On April 9, 2010, Jennifer filed a petition for citation of indirect contempt of court, asserting Chad was required to "pay off the Capital One bank judgement [sic] which was a debt of the dissolution," (App. at 8), and alleging his failure to do so "caused [Jennifer] negative financial consequences." (*Id.*) After a hearing, the trial court denied her petition.

### **DISCUSSION AND DECISION**

Contempt of court "involves disobedience of a court which undermines the court's authority, justice, and dignity." *Srivastava v. Indianapolis Hebrew Congregation, Inc.*, 779

N.E.2d 52, 60 (Ind. Ct. App. 2002), *trans. denied*. “Willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt.” *Francies v. Francies*, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), *reh’g denied, trans. denied*. Indirect contempt proceedings are “for the benefit of the party who has been injured or damaged by the failure of another to conform to a court order issued for the private benefit of the aggrieved party.” *Cowart v. White*, 711 N.E.2d 523, 530 (Ind. 1999), *reh’g granted on other grounds*, 716 N.E.2d 401.

“Whether a person is in contempt of a court order is a matter left to the trial court’s discretion.” *Mitchell v. Mitchell*, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). We will reverse only where an abuse of discretion has been shown. *Id.* An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* When we review a ruling on a petition for contempt, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.*

Jennifer’s petition claimed Chad did not abide by the court’s order in the dissolution property settlement, and “it has caused [Jennifer] negative financial consequences.” (App. at 8.) However, while Jennifer presented evidence that Chad’s failure to pay the judgment to Capital One caused her initial application for financing to be denied, Jennifer did not present evidence of any “negative financial consequences” stemming from Chad’s declaration of bankruptcy.

Jennifer testified she had not attempted to refinance the marital residence since Chad’s bankruptcy was finalized, because she was afraid the earlier judgment would affect her

ability to do so. Jennifer's witness, a bank representative, was asked if Jennifer would be approved for financing now. He responded, "That I can't, I can't respond to that because I don't know what her credit score is, I don't know what her debt to income is. And that's the criteria that the bank looks at." (Tr. at 8.)

Jennifer also claims Chad's bankruptcy caused her to be responsible for payment of the judgment present on her title search in August 2008. She presented no evidence to that effect, and in fact presented evidence to the contrary. When asked, "Has Capital One, meaning this credit card and the judgment, have they been seeking you, have they solicited any payments from you or contacted you or harassed you in any way?" Jennifer answered, "No, they have not." (*Id.* at 21.)

Jennifer has not demonstrated damages or injury due to Chad's bankruptcy. Her claims appear to be based on speculation that Chad's bankruptcy might affect her ability to refinance the marital residence or that she might become responsible for debt attributed to Chad in the dissolution property settlement. It is well-settled "a decision or finding must be based upon the proven facts and cannot be based upon mere guess, conjecture, surmise, possibility or speculation." *Halkias v. Gary Nat. Bank*, 142 Ind. App. 329, 333, 234 N.E.2d 652, 655 (1968). Therefore, we cannot say the trial court abused its discretion in denying Jennifer's petition for citation of indirect contempt.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.